

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 181

AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 16-41-8-1, AS AMENDED BY P.L.135-2005, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. **(a) As used in this chapter, "potentially disease transmitting offense" means any of the following:**

- (1) Battery by body waste (IC 35-42-2-6).**
- (2) An offense relating to a criminal sexual act (as defined in IC 35-41-1-19.3), if sexual intercourse or deviate sexual conduct occurred.**

The term includes an attempt to commit an offense, if sexual intercourse or deviate sexual conduct occurred, and a delinquent act that would be a crime if committed by an adult.

(a) (b) Except as provided in ~~subsections (d) and (e)~~, **this chapter**, a person may not disclose or be compelled to disclose medical or epidemiological information involving a communicable disease or other disease that is a danger to health (as defined under rules adopted under IC 16-41-2-1). This information may not be released or made public upon subpoena or otherwise, except under the following circumstances:

- (1) Release may be made of medical or epidemiologic information for statistical purposes if done in a manner that does not identify an individual.**
- (2) Release may be made of medical or epidemiologic information**

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with the written consent of all individuals identified in the information released.

(3) Release may be made of medical or epidemiologic information to the extent necessary to enforce public health laws, laws described in IC 31-37-19-4 through IC 31-37-19-6, IC 31-37-19-9 through IC 31-37-19-10, IC 31-37-19-12 through IC 31-37-19-23, IC 35-38-1-7.1, and IC 35-42-1-7, or to protect the health or life of a named party.

(4) Release may be made of the medical information of a person in accordance with this chapter.

~~(b)~~ (c) Except as provided in ~~subsection (a)~~, **this chapter**, a person responsible for recording, reporting, or maintaining information required to be reported under IC 16-41-2 who recklessly, knowingly, or intentionally discloses or fails to protect medical or epidemiologic information classified as confidential under this section commits a Class A misdemeanor.

~~(e)~~ (d) In addition to subsection ~~(b)~~, (c), a public employee who violates this section is subject to discharge or other disciplinary action under the personnel rules of the agency that employs the employee.

~~(d)~~ (e) Release shall be made of the medical records concerning an individual to:

- (1) the individual;
- (2) a person authorized in writing by the individual to receive the medical records; or
- (3) a coroner under IC 36-2-14-21.

~~(e)~~ (f) An individual may voluntarily disclose information about the individual's communicable disease.

~~(f)~~ (g) The provisions of this section regarding confidentiality apply to information obtained under IC 16-41-1 through IC 16-41-16.

SECTION 2. IC 16-41-8-4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 4. (a) This section applies to the release of medical information that may be relevant to the prosecution or defense of a person who has been charged with a potentially disease transmitting offense.**

(b) A:

- (1) prosecuting attorney may seek to obtain access to a defendant's medical information if the defendant has been charged with a potentially disease causing offense; and**
- (2) defendant who has been charged with a potentially disease causing offense may seek access to the medical information of another person if the medical information would be relevant**

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to the defendant's defense;
by filing a verified petition for the release of medical information
with the court.

(c) The prosecuting attorney or defendant who files a petition
under subsection (b) shall serve a copy of the petition on:

- (1) the person whose medical information is sought;
- (2) the guardian, guardian ad litem, or court appointed
special advocate appointed for a minor, parent, or custodian
of a person who is incompetent, if applicable; and
- (3) the provider that maintains the record, or the attorney
general if the provider is a state agency;

at the time of filing in accordance with Indiana Trial Rule 4.

(d) The court shall set the matter for hearing not later than
twenty (20) days after the date of filing.

(e) If, following a hearing for release of a person's medical
information, the court finds probable cause to believe that the
medical information may be relevant to the prosecution or defense
of a person who has been charged with a potentially disease
transmitting offense, the court shall order the person having
custody of the person's medical information to release the medical
information to the court.

(f) The court shall examine the person's medical information in
camera. If, after examining the medical information in camera and
considering the evidence presented at the hearing, the court finds
probable cause to believe that the medical information is relevant
to the prosecution or defense of a person who has been charged
with a potentially disease transmitting offense, the court may order
the release of a person's medical information to the petitioner.

(g) In an order issued under subsection (f), the court shall:

- (1) permit the disclosure of only those parts of the person's
medical information that are essential to fulfill the objective
of the order;
- (2) restrict access to the medical information to those persons
whose need for the information is the basis of the order; and
- (3) include in its order any other appropriate measures to
limit disclosure of the medical information to protect the right
to privacy of the person who is the subject of the medical
information.

(h) A hearing for the release of a person's medical information
may be closed to the public. The transcript of the hearing, the
court's order, and all documents filed in connection with the
hearing are confidential. In addition, if a person's medical

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information is disclosed in a legal proceeding, the court shall order the record or transcript of the testimony to be preserved as a confidential court record.

(i) This section does not prohibit the application to medical information of any law concerning medical information that is not addressed by this section.

SECTION 3. IC 16-41-8-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) The following definitions apply throughout this section:

(1) "Bodily fluid" means blood, human waste, or any other bodily fluid.

(2) "Dangerous disease" means any of the following:

(A) Chancroid.

(B) Chlamydia.

(C) Gonorrhea.

(D) Hepatitis.

(E) Human immunodeficiency virus (HIV).

(F) Lymphogranuloma venereum.

(G) Syphilis.

(H) Tuberculosis.

(3) "Offense involving the transmission of a bodily fluid" means any offense (including a delinquent act that would be a crime if committed by an adult) in which a bodily fluid is transmitted from the defendant to the victim in connection with the commission of the offense.

(b) This subsection applies only to a defendant who has been charged with a potentially disease transmitting offense. At the request of an alleged victim of the offense, the parent, guardian, or custodian of an alleged victim who is less than eighteen (18) years of age, or the parent, guardian, or custodian of an alleged victim who is an endangered adult (as defined in IC 12-10-3-2), the prosecuting attorney shall petition a court to order a defendant charged with the commission of a potentially disease transmitting offense to submit to a screening test to determine whether the defendant is infected with a dangerous disease. In the petition, the prosecuting attorney must set forth information demonstrating that the defendant has committed a potentially disease transmitting offense. The court shall set the matter for hearing not later than forty-eight (48) hours after the prosecuting attorney files a petition under this subsection. The alleged victim, the parent, guardian, or custodian of an alleged victim who is less than eighteen (18) years

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of age, and the parent, guardian, or custodian of an alleged victim who is an endangered adult (as defined in IC 12-10-3-2) are entitled to receive notice of the hearing and are entitled to attend the hearing. The defendant and the defendant's counsel are entitled to receive notice of the hearing and are entitled to attend the hearing. If, following the hearing, the court finds probable cause to believe that the defendant has committed a potentially disease transmitting offense, the court may order the defendant to submit to a screening test for one (1) or more dangerous diseases. If the defendant is charged with committing battery by body waste (IC 35-42-2-6), the court may limit testing under this subsection to a test only for human immunodeficiency virus (HIV). However, the court may order additional testing for human immunodeficiency virus (HIV) as may be medically appropriate. The court shall take actions to ensure the confidentiality of evidence introduced at the hearing.

(c) This subsection applies only to a defendant who has been charged with an offense involving the transmission of a bodily fluid. At the request of an alleged victim of the offense, the parent, guardian, or custodian of an alleged victim who is less than eighteen (18) years of age, or the parent, guardian, or custodian of an alleged victim who is an endangered adult (as defined in IC 12-10-3-2), the prosecuting attorney shall petition a court to order a defendant charged with the commission of an offense involving the transmission of a bodily fluid to submit to a screening test to determine whether the defendant is infected with a dangerous disease. In the petition, the prosecuting attorney must set forth information demonstrating that:

- (1) the defendant has committed an offense; and
- (2) a bodily fluid was transmitted from the defendant to the victim in connection with the commission of the offense.

The court shall set the matter for hearing not later than forty-eight (48) hours after the prosecuting attorney files a petition under this subsection. The alleged victim of the offense, the parent, guardian, or custodian of an alleged victim who is less than eighteen (18) years of age, and the parent, guardian, or custodian of an alleged victim who is an endangered adult (as defined in IC 12-10-3-2) are entitled to receive notice of the hearing and are entitled to attend the hearing. The defendant and the defendant's counsel are entitled to receive notice of the hearing and are entitled to attend the hearing. If, following the hearing, the court finds probable cause to believe that the defendant has committed an offense and that a bodily fluid was transmitted from the defendant to the alleged

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victim in connection with the commission of the offense, the court may order the defendant to submit to a screening test for one (1) or more dangerous diseases. If the defendant is charged with committing battery by body waste (IC 35-42-2-6), the court may limit testing under this subsection to a test only for human immunodeficiency virus (HIV). However, the court may order additional testing for human immunodeficiency virus (HIV) as may be medically appropriate. The court shall take actions to ensure the confidentiality of evidence introduced at the hearing.

(d) The testimonial privileges applying to communication between a husband and wife and between a health care provider and the health care provider's patient are not sufficient grounds for not testifying or providing other information at a hearing conducted in accordance with this section.

(e) A health care provider (as defined in IC 16-18-2-163) who discloses information that must be disclosed to comply with this section is immune from civil and criminal liability under Indiana statutes that protect patient privacy and confidentiality.

(f) The results of a screening test conducted under this section shall be kept confidential if the defendant ordered to submit to the screening test under this section has not been convicted of the potentially disease transmitting offense or offense involving the transmission of a bodily fluid with which the defendant is charged. The results may not be made available to any person or public or private agency other than the following:

- (1) The defendant and the defendant's counsel.
- (2) The prosecuting attorney.
- (3) The department of correction or the penal facility, juvenile detention facility, or secure private facility where the defendant is housed.
- (4) The alleged victim or the parent, guardian, or custodian of an alleged victim who is less than eighteen (18) years of age, or the parent, guardian, or custodian of an alleged victim who is an endangered adult (as defined in IC 12-10-3-2), and the alleged victim's counsel.

The results of a screening test conducted under this section may not be admitted against a defendant in a criminal proceeding or against a child in a juvenile delinquency proceeding.

(g) As soon as practicable after a screening test ordered under this section has been conducted, the alleged victim or the parent, guardian, or custodian of an alleged victim who is less than eighteen (18) years of age, or the parent, guardian, or custodian of

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an alleged victim who is an endangered adult (as defined in IC 12-10-3-2), and the victim's counsel shall be notified of the results of the test.

(h) An alleged victim may disclose the results of a screening test to which a defendant is ordered to submit under this section to an individual or organization to protect the health and safety of or to seek compensation for:

- (1) the alleged victim;
- (2) the alleged victim's sexual partner; or
- (3) the alleged victim's family.

(i) The court shall order a petition filed and any order entered under this section sealed.

(j) A person that knowingly or intentionally:

- (1) receives notification or disclosure of the results of a screening test under this section; and
- (2) discloses the results of the screening test in violation of this section;

commits a Class B misdemeanor.

SECTION 4. IC 34-30-2-81.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 81.3. IC 16-41-8-6 (Concerning a health care provider who discloses information in compliance with IC 16-41-8-5).**

SECTION 5. IC 35-38-1-10.5, AS AMENDED BY P.L.125-2007, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10.5. (a) The court:

(1) shall order that a person undergo a screening test for the human immunodeficiency virus (HIV) if the person is:

(A) convicted of an offense relating to a criminal sexual act and the offense created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV); or

(B) convicted of an offense relating to controlled substances and the offense involved:

- (i) the delivery by any person to another person; or
- (ii) the use by any person on another person;

of a contaminated sharp (as defined in IC 16-41-16-2) or other paraphernalia that creates an epidemiologically demonstrated risk of transmission of HIV by involving percutaneous contact; and

(2) may order that a person undergo a screening test for ~~the~~ human immunodeficiency virus (HIV) if the court has made a

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~~finding of probable cause after a hearing under section 10.7 of this chapter.~~ **a dangerous disease (as defined in IC 16-41-8-5) in accordance with IC 16-41-8-5.**

(b) If the screening test required by this section indicates the presence of antibodies to HIV, the court shall order the person to undergo a confirmatory test.

(c) If the confirmatory test confirms the presence of the HIV antibodies, the court shall report the results to the state department of health and require a probation officer to conduct a presentence investigation to:

- (1) obtain the medical record of the convicted person from the state department of health under IC 16-41-8-1(a)(3); and
- (2) determine whether the convicted person had received risk counseling that included information on the behavior that facilitates the transmission of HIV.

(d) A person who, in good faith:

- (1) makes a report required to be made under this section; or
- (2) testifies in a judicial proceeding on matters arising from the report;

is immune from both civil and criminal liability due to the offering of that report or testimony.

(e) The privileged communication between a husband and wife or between a health care provider and the health care provider's patient is not a ground for excluding information required under this section.

(f) A mental health service provider (as defined in IC 34-6-2-80) who discloses information that must be disclosed to comply with this section is immune from civil and criminal liability under Indiana statutes that protect patient privacy and confidentiality.

SECTION 6. IC 35-38-1-10.6, AS AMENDED BY P.L.125-2007, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10.6. (a) The state department of health shall notify victims of an offense relating to a criminal sexual act or an offense relating to controlled substances if tests conducted under section 10.5 ~~or 10.7~~ of this chapter **or IC 16-41-8-5** confirm that the person tested had antibodies for the human immunodeficiency virus (HIV).

(b) The state department of health shall provide counseling to persons notified under this section.

SECTION 7. IC 35-42-4-7, AS AMENDED BY P.L.1-2005, SECTION 228, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) As used in this section, "adoptive parent" has the meaning set forth in IC 31-9-2-6.

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(b) As used in this section, "adoptive grandparent" means the parent of an adoptive parent.

(c) As used in this section, "charter school" has the meaning set forth in IC 20-18-2-2.5.

~~(c)~~ **(d)** As used in this section, "child care worker" means a person who:

(1) provides care, supervision, or instruction to a child within the scope of the person's employment in a shelter care facility; ~~or~~

(2) is employed by a:

(A) school corporation; ~~or~~

(B) charter school;

~~(B)~~ **(C) nonpublic school; or**

(D) special education cooperative;

attended by a child who is the victim of a crime under this chapter; **or**

(3) is:

(A) affiliated with a:

(i) school corporation;

(ii) charter school;

(iii) nonpublic school; or

(iv) special education cooperative;

attended by a child who is the victim of a crime under this chapter, regardless of how or whether the person is compensated;

(B) in a position of trust in relation to a child who attends the school or cooperative;

(C) engaged in the provision of care or supervision to a child who attends the school or cooperative; and

(D) at least four (4) years older than the child who is the victim of a crime under this chapter.

The term does not include a student who attends the school or cooperative.

~~(d)~~ **(e)** As used in this section, "custodian" means any person who resides with a child and is responsible for the child's welfare.

(f) As used in this section, "military recruiter" means a member of the armed forces of the United States (as defined in IC 20-33-10-2) or the Indiana National Guard whose primary job function, classification, or specialty is recruiting individuals to enlist with the armed forces of the United States or the Indiana National Guard.

~~(e)~~ **(g)** As used in this section, "nonpublic school" has the meaning set forth in IC 20-18-2-12.

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~~(h)~~ **(h)** As used in this section, "school corporation" has the meaning set forth in IC 20-18-2-16.

(i) As used in this section, "special education cooperative" has the meaning set forth in IC 20-35-5-1.

~~(g)~~ **(j)** As used in this section, "stepparent" means an individual who is married to a child's custodial or noncustodial parent and is not the child's adoptive parent.

~~(h)~~ **(k)** If a person who: ~~is:~~

(1) **is** at least eighteen (18) years of age; and

(2) **is:**

(A) the:

~~(A)~~ **(i)** guardian, adoptive parent, adoptive grandparent, custodian, or stepparent of; or

~~(B)~~ **(ii)** child care worker for; or

(B) a military recruiter who is attempting to enlist;

a child at least sixteen (16) years of age but less than eighteen (18) years of age;

engages with the child in sexual intercourse, deviate sexual conduct (as defined in IC 35-41-1-9), or any fondling or touching with the intent to arouse or satisfy the sexual desires of either the child or the adult, the person commits child seduction, a Class D felony.

SECTION 8. IC 35-50-2-14, AS AMENDED BY P.L.173-2006, SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 14. **(a) As used in this section, "sex offense" means a felony conviction:**

(1) **under IC 35-42-4-1 through IC 35-42-4-9 or under IC 35-46-1-3;**

(2) **for an attempt or conspiracy to commit an offense described in subdivision (1); or**

(3) **for an offense under the laws of another jurisdiction, including a military court, that is substantially similar to an offense described in subdivision (1).**

~~(a)~~ **(b)** The state may seek to have a person sentenced as a repeat sexual offender for a sex offense ~~under IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3, or for an offense committed in another jurisdiction that is substantially similar to a sex offense under IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3, described in subsection (a)(1) or (a)(2) by alleging, on a page separate from the rest of the charging instrument, that the person has accumulated one (1) prior unrelated felony conviction for a sex offense under IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3, or for an offense committed in another jurisdiction that is substantially similar to a sex offense under~~

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~~IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3.~~ **described in subsection (a).**

~~(b)~~ **(c)** After a person has been convicted and sentenced for a felony committed **described in subsection (a)(1) or (a)(2)** after **sentencing having been sentenced** for a prior unrelated felony conviction under ~~IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3~~; or for an offense committed in another jurisdiction that is substantially similar to a sex offense under ~~IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3~~; **sex offense described in subsection (a)**, the person has accumulated one (1) prior unrelated felony **sex offense** conviction. However, a conviction does not count for purposes of this subsection, if:

(1) it has been set aside; or

(2) it is ~~one~~ **a conviction** for which the person has been pardoned.

~~(c)~~ **(d)** If the person was convicted of the **sex** offense in a jury trial, the jury shall reconvene to hear evidence in the enhancement hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall hear evidence in the enhancement hearing.

~~(d)~~ **(e)** A person is a repeat sexual offender if the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the person had accumulated one (1) prior unrelated felony **sex offense** conviction. ~~under IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3~~; or had accumulated one ~~(1)~~ prior unrelated conviction for an offense committed in another jurisdiction that is substantially similar to a sex offense under ~~IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3~~.

~~(e)~~ **(f)** The court may sentence a person found to be a repeat sexual offender to an additional fixed term that is the advisory sentence for the underlying offense. However, the additional sentence may not exceed ten (10) years.

SECTION 9. IC 35-38-1-10.7 IS REPEALED [EFFECTIVE JULY 1, 2009].

SECTION 10. [EFFECTIVE JULY 1, 2009] **IC 35-42-4-7 and IC 35-50-2-14, both as amended by this act, apply only to crimes committed after June 30, 2009.**

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President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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